IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Dutta et al.**	§	
	§	Group Art Unit: **3627**
Serial No. **09/838,368**	§	
	§	Examiner: **Refai, Ramsey**
Filed: **April 19, 2001**	§	
	§	
For: **Automatic Backup of Wireless Mobile Device Data Onto Gateway Server While Device is Idle**	§	

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35525
PATENT TRADEMARK OFFICE
CUSTOMER NUMBER

REPLY BRIEF (37 C.F.R. 41.41)

This Reply Brief is submitted in response to the Examiner's Answer mailed on September 4, 2007.

No fees are believed to be required to file a Reply Brief. If any fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447.

RESPONSE TO EXAMINER'S ANSWER

There are a few new issues or cited art interpretations that were newly made in the Examiner's Answer, for which Appellants feel a need to respond to in order to establish a clear record of the differences between the claimed features in the present Application and the teachings of the cited references.

Lazaridis Reference and Backup Command/Application Identifier (with respect to Claim 6)

On page 3 of the Examiner's Answer, the Examiner provides a new reasoning for how the cited Lazaridis reference teaches pushing of a command to a wireless device to backup data – stating that this is taught at 'col. 7, lines 31-34 and col. 4, lines 45-46, column 1, lines 30-43; instead of mobile device requesting synchronization, host uses push paradigm that *continuously transmits user selected data items* upon detection of trigger event' (emphasis added by Appellants). Appellants urge that such continuous transmission of user selected data items: (1) does not teach or suggest any pushing of a *command* to the wireless device *to back up data*, and (2) further evidences that there would have been no motivation to modify the teachings of the cited references in accordance with the inventive features expressly recited in Claim 1.

First, Lazaridis' pushing/transmitting of user selected data items does not teach or otherwise suggest any pushing of a *command* to a wireless device *to backup data*. Instead, *data items* such as e-mail messages, calendar events, etc. are pushed to the wireless device (Lazaridis col. 3, lines 14-20). The fact that Lazaridis may teach sending a confirmation to a host that the data has been received does not somehow redefine the data that is sent to the wireless device into being some type of command to a wireless device to backup data (see, e.g. page 11, Argument B of the Examiner's Answer).

Second, and as just shown, Lazaridis is directed to continuously pushing of data items, and not commands, to a wireless device (Lazaridis col. 1, lines 35-39; col. 3, lines 14-20). As expressly admitted by the Examiner in the rejection of Claim 7 (which is further discussed below), none of the cited references teach or otherwise contemplate a wireless device that retrieves and executes an application to transmit data, that was requested to be backed up, to a server. Thus, there would be no reason for either of the teachings of the cited references to include in a textual based service

load a uniform resource identifier for *an application that the wireless device may retrieve and execute on the wireless device* in order to transmit to a server data that was requested to be backed up, as neither reference describes a wireless device that performs such functionality and therefore there would be no need or other reason to provide such identifier in a textual based service load as it would serve no purpose other than to adversely impact system performance by needlessly transmitting commands that serve no useful purpose. Thus, it is urged that the only possible motivation for modifying the teachings of the cited references in accordance with the missing features of Claim 6 must be coming from Appellants' own disclosure and claims, which is impermissible hindsight analysis.

Muir Reference and Application Retrieval (with respect to Claim 7)

On page 4 of the Examiner's Answer, the Examiner provides a new interpretation of the teachings of the cited Muir reference at col. 3, lines 1-42; Abstract; and Figure 1, and now states that Muir teaches 'The hyperlink (uniform resource identifier) associated with the configuration file is therefore used to retrieve the application'. This is clearly an erroneous interpretation of the teachings of Muir, as will now be described.

Claim 7 in combination with its independent Claim 6 recites features of:

> "pushing, over the wireless network to the wireless device, a request to backup data, wherein the step of pushing the request comprises sending a textual based service load to a proxy server, wherein the service load provides a uniform resource identifier for an application that the wireless device may retrieve to transmit the data to the server"

As can be seen, as a part of the step of pushing to the wireless device a command to backup data, a textual based service load is sent to a proxy server – and this service load provides a uniform resource identifier for an application that the wireless device may retrieve in order to transmit the data (being backed up) to the server. Muir does not teach any such application (identified by a uniform resource locator) that a client may retrieve to transmit data to the server. Muir's application, as requested by a client, is *always* executed by the server and not by a client or wireless device. This can be seen by numerous passages in Muir. For example, as stated by Muir at col. 1, lines 45-50:

> Although hypermedium has been used to transfer information to a user in the manner just discussed, it is desirable to be able to use a hypermedium display to **interactively execute applications such as database programs located on another computer, an application execution server**, on the network. The present invention relates to a method and apparatus to accomplish this task.

This remote application execution can also be seen at col. 1, line 54 – col. 2, line 13, where it states:

> "The invention relates to a system of making a hypermedium page interactive to thereby permit an application to be executed on one node and the results displayed and data entered on another node. In one embodiment the system includes a client node, a network server node and an application execution server node interconnected by a communication link. A hyperlink on the hypermedium page is displayed on the client node and a hyperlink configuration file (corresponding to the hyperlink on the client node) is located on the network server node. In one embodiment, a client agent is located on the client node and a server agent is located on the application execution server node. A communication link is created by the client agent between the client agent on the client node and the server agent on the application execution server node in response to data in the hyperlink configuration file. The system also includes **an application on the application execution server node which executed on the application execution server node** in response to the communications link between the client agent and the server agent. The **application running on the application execution node** then communicates with the client agent through the server agent. The client agent on the client node is responsible for receiving data input from the user and transferring the data to the **application on the application execution node** and receiving data from the **application on the application execution node** and displaying data output to the user on the client node."

This remote application execution can also be seen at col. 2, line 63 – 67, where it states:

> "A user on a client node wishing to run the **application program 36 which is located on the application execution server 24** on the web 32 does so through a graphical user interface 40, which is herein referred to without any loss of generality as a hypermedium, located on the client node 10."

This remote application execution can also be seen at col. 3, lines 12 – 42, where it states:

> "The network browser 64 obtains the first page or web page 44 from a network server node 18 and displays the web page 44 on the hypermedium 40 for the user to view on the graphical display device 42. When the user selects an application

program 36 to execute (by selecting a graphical 48 or textual 56 hyperlink using the mouse 46 or keyboard 50) the network browser 64 obtains a network configuration file 68 corresponding to the selected application 36 from a predetermined network server 18 and **starts a client agent 72 which will communicate with the selected application 36**. This will be discussed in more detail below.

The client agent 72 reads the configuration file 68 and establishes a communications link to a server agent 80 on the application execution server 24 specified by the configuration file 68. In one embodiment, **the configuration file 68 includes the name of the application and the node location of the application** 36 corresponding to the hyperlink 48, 56. The configuration file may also contain optional information such as authentication or authorized user information. **Server agent 80** performs the operations necessary (such as authentication) to permit the client agent 72 access to the application 36, and once access is permitted, **starts the application 36 requested by the user**. Once the **application 36 is executing on the application execution server**, the application 36 communicates through the server agent 80 directly with the client agent 72 without intervention by the network browser 64. The client agent 72 is then responsible for receiving data from the user through the mouse 46 and keyboard 50 and transmitting it to **the application program 36 on the application execution server 24**."

This remote application execution can also be seen at element 36 of Muir Figure 1, where the application is shown to exist solely within Application Execution Server 24.

The entire premise of Muir is to provide an ability for a client to remotely execute an application that executes remotely on an application execution server. The URL that the user selects does not identify *an application that the wireless device may retrieve to transmit data* (being backed up) to a server, as now newly alleged by the Examiner on page 4 of the Examiner's Answer. Instead, Muir teaches a configuration file that contains data including the name of the application to be executed on a remote server/host. Again, this configuration file is not used to identify an application that a wireless device may retrieve transmit data to a server, as now newly alleged by the Examiner.

It is further shown that this cited Muir reference is deficient in what it is alleged to teach, as Muir does not contemplate any type of wireless device, and therefore it does not teach – nor would there have been a reason or other motivation to modify such teachings - to include a *service load* that provides an application identifier, as expressly recited in Claim 7. The Examiner states that a web page provides the alleged identifier, and a web page is clearly different from a service load (as

that term is commonly known to those of ordinary skill in the art).

In addition, because of the fundamental architectural differences between the teachings of Muir and the features of Claim 7 (for example, where the application is actually executed by the wireless device to transmit data to a server, as claimed), a person of ordinary skill in the art would not have been motivated to essentially eviscerate the entire premise and purpose that is provided by the Muir system in modifying such teachings in accordance with the features of Claim 7 – further evidencing that Claim 7 is not obvious in view of the cited references, and has therefore been erroneously rejected.

In a second paragraph regarding the Claim 7 discussion of Muir in the Examiner's Answer, the Examiner expressly acknowledges that Muir teaches that the application is executed on the server and not received by the wireless device. However, the Examiner goes on to state that it would have been obvious to receive that application at the wireless device (as evidenced by Lazaridis et al who teaches the redirector program is executed on the wireless device), in order to use the application on the device to backup data. Appellants urge numerous errors in such obviousness assertion, as will now be described.

A person of ordinary skill in the art would not have been motivated to modify the location of where the Muir application is executed, as the entire premise of Muir is to provide an ability for a client to initiate execution of an application that executes remotely on an application execution server. Such a modification would essentially eviscerate the entire premise and purpose that is provided by the Muir system of remote application execution that executes on an application execution server – evidencing no motivation to make such a modification.

Nor do the teachings of Lazaridis somehow trump the Muir teachings to provide such motivation. Again, due to the fundamental Muir architecture, a person of ordinary skill in the art would not have been motivated to strip the Muir teachings of their fundamental and primary purpose and therefore substitute teachings of a totally different architected system such as the one taught by Lazaridis.

Even if one where to eviscerate the Muir teachings, there would still be no teaching or suggestion of the claimed feature of "wherein the service load provides a uniform resource identifier for an application that the wireless device may retrieve to transmit the data to the server". Because Lazaridis does not teach a redirector program that is solely executed on a

wireless device, but instead teaches a redirector program that operates on both of the host system and the wireless device (Lazaridis col. 4, lines 47-48), there would be no reason to send a URL identifier of an application to be executed on a client due to this built-in tandem execution of the redirector program by both the host system and the wireless device – further evidencing non-obviousness as there would have been no motivation to modify such teachings in accordance with the missing claimed feature pushing a command to a wireless device to backup data that includes as application identifier for client retrieval of an application to transmit data to a server.

Lazaridis Reference and Application Identifier (with respect to Claim 10)

On page 7 of the Examiner's Answer, the Examiner states (at Section 16):

> "As per claim 10, Lazaridis et al teach a method on a proxy server for facilitating data backup, the method comprising:
> receiving a request from a backup server for a wireless device client to backup data to the backup server (column 7, lines 31-34, column 4, lines 45-56 and column 4, lines 46-56), wherein the request is a textual based service load providing the wireless client with a uniform resource identifier for an application which will identify, locate and transmit the requested data to the backup server;"

Curiously, this is diametrically opposite to the Examiner's position taken with respect to the teachings of Lazaridis and Claim 10 in the Final Office Action dated August 11, 2006. There, the Examiner stated in rejecting this same Claim 10 (on page 15, Section 42):

> "As per claim 10, Lazaridis et al fail to teach providing the client with a uniform resource identifier for an application which will identify, locate and transmit the requested data to the backup server" (emphasis added by Appellants)

Appellants agree with this previous Examiner assessment of the teachings of the cited Lazaridis, as such reference does not in fact teach providing a client with a uniform resource identifier for an application which will identify, locate and transmit the requested data to the backup server. In rejecting the claimed 'receiving a request from a backup server' aspect of Claim 10, for which the claimed application identifier feature is recited within, the Examiner states in the present Examiner's Answer that the such claimed 'receiving' step is taught by Lazaridis at column 7,

lines 31-34, column 4, lines 45-56 and column 4, lines 46-56. Appellants urge that Lazaridis description at the cited column 7 passage describes network events being *transmitted **to** a host system*, and such passage does not describe any providing of anything ***to** a client*, such as an application identifier, as claimed. The Lazaridis description at the cited column 4 passage describes pushing certain user-defined events *from the mobile device **to** the host system*, and such passage does not describe any providing of anything ***to** a client*, such as an application identifier, as claimed. The Lazaridis description at the cited column 4 passage is a duplicate citation of the same column 4, lines 46-56 previously cited as teaching such claimed application identifier feature. Thus, contrary to the Examiner's assertion in the Examiner's Answer – and yet consistent with the Examiner's previous position in finally rejecting Claim 10 (in the Final Office Action dated August 11, 2006) – the cited Lazaridis reference does not teach the claimed feature of "receiving a request in a first protocol from a backup server for a wireless client to backup data to the backup server, wherein the request is a textual based service load providing the client with a uniform resource identifier for an application which will identify, locate, and transmit the requested data to the backup server". Thus, a proper prima facie showing of obviousness has not been established with respect to Claim 10, and accordingly such claim has been erroneously rejected.

CONCLUSION

It is therefore respectfully submitted that all pending claims have been erroneously rejected, as described hereinabove and in Appellants' Appeal Brief, and Appellants thus request that the Board reverse the final rejection of all such claims.

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